IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 836 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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RAKESHKUMAR DEVENDRA

Versus

ONGC LTD

Appearance:

1. Civil Revision Application No. 836 of 2001

MR AK CLERK for Petitioner No. 1-6

MR RAJNI H MEHTA for Respondent No. 1

..... for Respondent No. 2

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 01/08/2001

ORAL JUDGEMENT

Leave granted to the petitioner to produce the copy of the plaint.

1. Rule. Learned Advocate Mr. A.R. Mehta appearing for Mr. R.H. Mehta on behalf of the respondent no.1 waives service of rule.

2. The petitioners have challenged the order dated 23-7-2001 passed by the learned Extra Assistant Judge, Bharuch in Misc. Civil Appeal no.94/2000; whereby the learned Appellate Court has set aside the order passed below Exh.5 in Regular Civil Suit no.39/2000 on 1-5-2000 by the learned Civil Judge (J.D.), Ankleshwar.

That the present petitioners filed Regular Civil Suit no.39/2000 against the respondent no.1 with a prayer for a declaration and perpetual injunction. One of the declaration and injunction prayed is to restrain the defendant no.1 from dispossessing the petitioners-plaintiffs from the suit premises without following due process of law.

It appears that the trial Court after hearing Exh.5 allowed the application and restrained the defendant from acting in any manner with regard to the disputed shop by way of inviting tenders etc. till the disposal of the suit and directed the parties to maintain status quo with respect to the possession of the plaintiff in respect to disputed shops till final disposal of the suit.

Being aggrieved by the said order, the defendant no.1 preferred the said Misc. Civil Appeal no.94/2000 After hearing the same, the lower Appellate Court vide impugned order set aside the above stated order of learned Civil Judge (J.D.), Ankleshwar, and hence, the petitioners-plaintiffs have filed the present Revision Application.

3. By consent of the parties, the petition is taken up for final hearing.

That during the hearing it transpired that the petitioners-plaintiffs are occupying the suit premises owned by the respondent no.1 under a contract of licence and an agreement of arbitration to resolve the dispute arising from such contract is incorpprated into the said contract for which a contention has already been raised by the present respondent before the trial Court. I am told that the trial Court has decided the said contention against the respondent holding that the respondent having taken part in the suit proceedings thereof could not claim for reference to the arbitration.

Under such circumstances, the lower Appellate Court has rightly set aside the part of the order passed by the trial Court, as trial Court could not have restrained the respondent-defendant from inviting tenders to allot the shops of disputed premises. The trial Court also could not have rejected the contention for refernce to the arbitration as under the provisions of Arbitration and Concilliation Act, 1996, Civil Court has no jurisdiction to decide matter where Part I of the Act apply and the Court ought to have decided the said contention before proceeding further with the application for temporary injunction. In view of the said facts and circumstances, the order of the appellate Court is hereby set aside and order of trial Court dated 1st May, 2000 passed below Exh.5 is modified to the extent that defendant-respondent shall not dispossess the petitioners-plaintiffs from the respective premises occupied by them without following due procedure prescribed by law.

4. It is clarified that the respondent no.1 shall be at liberty to invite tenders for the suit premises and process the same pending the proceedings of the suit. However, the contention raised by the respondent as defendant in Regular Civil Suit no.39/2000 to the effect that suit dispute is required to be resolved by arbitration as per arbitration agreement contained in the contract between the parties shall be decided at the earliest date by the trial Court in accordance with law if any application for the same is moved by the respondent-defendant.

Rule is made absolute to the aforesaid extent.

(A.K.Trivedi,J.)

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